

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JESSIE CLIFTON SMITH

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:03CV113-RHW

RONALD KINGS, et al

DEFENDANTS

ORDER DENYING MOTION TO DISMISS

Before the Court is Defendants' [44] Motion to Dismiss Plaintiff's 42 U.S.C. § 1983 complaint. Defendants assert that Plaintiff failed to exhaust his administrative remedies. Defendants argue that in his complaint, Plaintiff admitted to failing to exhaust. Exhaustion of administrative remedies through the prison grievance system is a jurisdictional prerequisite for lawsuits filed pursuant to § 1983. *See Wright v. Hollingsworth*, 260 F.3d 357 (5th Cir. 2001).

In his reply, Plaintiff argues that in fact he has exhausted the prison grievance system. He attached a copy of a Third Step Response form dated July 4, 2003. Thus, while it appears that Plaintiff had not exhausted administrative remedies at the time he filed his initial complaint on February 28, 2003, he subsequently completed the grievance system with respect to his claim for exposure to environmental tobacco smoke. Accordingly, the Court finds that Plaintiff has exhausted administrative remedies.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendants' [44] Motion to Dismiss is DENIED.

SO ORDERED, this the 11th day of May, 2006.

sl Robert H. Walker
UNITED STATES MAGISTRATE JUDGE